

AMENDED IN ASSEMBLY JULY 3, 2003

AMENDED IN SENATE APRIL 30, 2003

**SENATE BILL**

**No. 966**

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**Introduced by Senator Alarcon**

February 21, 2003

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An act to add Section 1781 to the Labor Code, relating to prevailing wages.

LEGISLATIVE COUNSEL'S DIGEST

SB 966, as amended, Alarcon. Public works and prevailing wages: contractor's costs.

Existing law generally requires the payment of the prevailing rate of per diem wages and the prevailing rate for holiday and overtime work to employees employed on public works projects that cost more than \$1,000. Existing law requires the Director of Industrial Relations to determine these wage rates and to provide these wage rates to an awarding body, as defined, that requests them. Existing state regulations authorize an interested party, as defined, to request that the director make a determination regarding the applicability of these provisions to a particular project.

This bill would authorize a contractor to bring an action in a court of competent jurisdiction to recover from ~~an awarding body~~ *the body awarding a contract for a public work or otherwise undertaking any public work* any increased costs, as defined, incurred by the contractor as a result of (1) ~~any decision that classifies, after the time at which the awarding body accepts the contractor's bid, a project as a "public work," as provided, or (2) a change, after the time at which the awarding body accepts the contractor's bid, in the prevailing wage rate;~~

~~as specified if certain conditions are met.~~ For purposes of these provisions, this bill would define “awarding body” to exclude the Department of General Services, the Department of Transportation, and the Department of Water Resources, and define “increased costs” to include, but not be limited to, ~~wages that are labor cost increases~~ required to be paid to the contractor’s workers and penalties for which the contractor is liable, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1781 is added to the Labor Code, to  
2 read:

3 1781. (a) Notwithstanding any other provision of law, a  
4 contractor may bring an action in a court of competent jurisdiction  
5 ~~to recover from an awarding body any increased costs incurred by~~  
6 ~~the contractor as a result of either of the following:~~

7 ~~(1) Any decision that classifies, after the time at which the~~  
8 ~~awarding body accepts the contractor’s bid, a project as a “public~~  
9 ~~work,” as defined in Section 1720, to which Section 1771 applies.~~

10 ~~(2) A change, after the time at which the awarding body accepts~~  
11 ~~the contractor’s bid, in the general prevailing rate of per diem~~  
12 ~~wages for work of a similar character in the locality in which a~~  
13 ~~public work is performed or the general prevailing rate of per diem~~  
14 ~~wages for holiday and overtime work in the locality in which the~~  
15 ~~public work is performed that is required to be paid to workers~~  
16 ~~employed on that public work.~~

17 ~~(b) to recover from the body awarding a contract for a public~~  
18 ~~work or otherwise undertaking any public work any increased~~  
19 ~~costs incurred by the contractor as a result of any decision that~~  
20 ~~classifies, after the time at which the body accepts the contractor’s~~  
21 ~~bid or awards the contractor a contract in circumstances where no~~  
22 ~~bid is solicited, the work covered by the bid or contract as a “public~~  
23 ~~work,” as defined in Section 1720, to which Section 1771 applies,~~  
24 ~~provided that the body, before the bid opening or awarding of the~~  
25 ~~contract, did any of the following:~~

26 ~~(1) Previously affirmatively represented to the contractor in~~  
27 ~~writing, in the call for bids or otherwise, that the work to be~~

1 covered by the bid or contract is not a “public work,” as defined  
2 in Section 1720.

3 (2) Received actual written notice from the Department of  
4 Industrial Relations that the work to be covered by the bid or  
5 contract is a “public work,” as defined in Section 1720, and failed  
6 to disclose that fact to the contractor before the bid opening or  
7 awarding of the contract.

8 (3) Failed to identify as a “public work,” as defined in Section  
9 1720, in the bid specification or in the contract documents that  
10 portion of the work that a decision from the Department of  
11 Industrial Relations classifies as a “public work.”

12 (b) When construction has not commenced at the time a final  
13 decision classifies all or part of the work covered by the bid or  
14 contract as a “public work,” as defined in Section 1720, the body  
15 that solicited the bid or awarded the contract shall rebid the  
16 “public work” covered by the contract as a “public work.”

17 (c) Where the decision classifying all or part of the work  
18 covered by the contractor’s bid or contract as a ‘public work,’ as  
19 defined in Section 1720, and entitling a contractor to bring an  
20 action for relief pursuant to this section is the result of a request  
21 for a determination filed with the Department of Industrial  
22 Relations, the party initiating the request for a determination shall  
23 be entitled to recover its reasonable legal fees and costs, if any, in  
24 the same action as a contractor, or by an action brought  
25 independently should the contractor elect not to initiate an action.

26 (d) For purposes of this section:

27 (1) “Awarding body” does not include the Department of  
28 General Services, the Department of Transportation, or the  
29 Department of Water Resources.

30 (2) “Increased costs” includes, but is not limited to:

31 ~~(A) Wages that are required to be paid to the contractor’s~~  
32 ~~workers as a result of the events described in paragraph (1) or (2)~~  
33 ~~of subdivision (a).~~

34 (A) Labor cost increases required to be paid to workers who  
35 perform or performed work on the “public work” as a result of the  
36 events described in subdivision (a).

1 (B) Penalties for a violation of this article for which the  
2 contractor is liable, and which violation is the result of the events  
3 described in ~~paragraph (1) or (2)~~ of subdivision (a).

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